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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P..No. 12405 of 2005
Date of decision:16.11.2006

M/S Gurtaj Entrprises, Kala Sanghian, District Kapurthala

...Appellant

Versus

Punjab State Agricultural Marketing Board, Punjab & another

...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sunil Chadha, Advocate for the petitioner.

Mr.Akshay Kumar, Advocate for the respondents.

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JUDGMENT

This petition seeks quashing of order dated 9.3.2005 (Annexure P-11) passed by the Deputy General Manager (Jalandhar Division), Punjab Mandi Board, Chandigarh acting as the Appellate Authority under the provisions of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short "the Rules").

The case of the petitioner firm is that it is running a rice mill and holds a license under Section 10 of the Punjab Agricultural Produce Markets Act,1961 (for short "the Act") from Market Committee, Kapurthala-respondent no.2 for business of purchase, sale, storage and process of agricultural produce. Demand for payment of market fee of

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Rs.45,592/-, RDF of Rs.45,592/- and the penalty of Rs.45,592/- was raised against the petitioner by respondent No.2 vide notice dated 16.10.1999 (Annexure P-1), which led to filing of appeal by the petitioner before the Punjab Mandi Board, on which matter was remanded for fresh decision vide order dated 21.12.2000 (Annexure P-8). Respondent No.2 issued fresh demand notice dated 23.7.2001 (Annexure P-9) for the same amount based on assessment order dated 25.6.2001 (Annexure P-10). The petitioner preferred an appeal, which has been dismissed by the impugned order.

The grievance of the petitioner is that in the order of assessment Annexure P-10 as well as in the impugned order Annexure P-11, no finding has been recorded that petitioner had sold or purchased any agricultural produce in the market area concerned, in the absence of which liability to Fee/RDF does not arise under the Act. Respondents have defended the order by submitting that inspite of the opportunities having been given, the petitioner failed to produce its record, which justified the demand raised.

We have heard learned counsel for the parties and perused the record.

A perusal of order of assessment Annexure P-10 shows that assessment has been made only on the ground that stock was found to be less and inspite of the opportunities the petitioner firm could not produce its record or explain it.

In the appellate order Annexure P-11, though contention was raised on behalf of the petitioner that levy of market fee was not justified in the absence of agricultural produce having been bought or sold by the petitioner in the notified area and the petitioner firm having received paddy

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from the Punsup and Markfed for shelling, which was delivered back to the Punsup and Markfed and FCI,the same was not dealt with. Operative part of the appellate order is as under:-

> " I have heard on 6.1.05 both the parties as length and gone through the record carefully, order was reserved. The appellant firm has a rice sheller at village Kala Sanghian in the notified market area of respondent market committee from this purpose they have taken two licenses for the market committee in the name of M/S Gurtaz Enterprises having two partners namely Baldhir Kaur and Ajit Singh and another in the name of M/S Sunder Rice and General Mills as Sardar Jagtar Singh its proprietor. Both these firms have separate premises and got separate Sale Tax Number, electric connection etc. It is admitted fact that the Secretary, market committee has visited the premises of M/S Gurtaj Enterprises on 13.9.1999 and made physical verification of the stock of paddy/rice lying in the premises of the firm. The firm could not produce any record relating to either of the said firms on the spot. After giving so many opportunities to the firm to show the relevant record, the license of the firm M/S Gurtaj Enterprises was suspended for 15 days. The appeal against the said suspension orders was also dismissed by appellate authority on 21.10.99 and directed the firm to show its record to the respondent committee within two days with a liberty to respondent committee to proceed further as per rules. Again the firms failed to produce record. As a

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result of this the respondent committee made an assessment of the business of the firm on the basis of their physical verification and after record available with them. A demand notice demanding a sum of Rs.45,592/- as market fee, Rs.45,592/- as RDF, Rs.45,592/- as penalty and Rs.2052/- as interest on RDF totaling to Rs,1,38,828/- was issued on 6.12.1999. Again the firm filed appeal to the appellate authority on the ground that the resolution passed by the Sub Committee was not got confirmed from the committee. Accepting the appeal the appellate authority again remanded the case to the respondent committee to issue a fresh demand notice after getting the approval of the full committee. In compliance with the orders of the appellate authority the respondent committee issued a fresh demand notice to the appellant firm on 23.7.01 after the approval of the full committee. Now the firm raised the objections that the respondent committee has taken account of paddy/rice of M/S Gurtaj Enterprises and only rice of M/S Sunder Rice and General Mills, but issued a demand notice in the name of M/S Gurtaz Enterprises only. On 16.9.04 an interim order was passed by the undersigned directing the respondent committee to reconsider the entry of rice stated to be of Sunder Rice and General Mills, Kala Sanghian, Kapurthala while making the assessment order of M/S Gurtaz Enterprises and issued a fresh demand notice only for the recovery of revised market fee,

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RDF, penalty and interest on RDF within 15 days from the date of receiving the order and produce the result on 30.9.2004. In compliance with this order dated 16.9.2004, the respondent committee issued a fresh notice and asked the firm to show the record on 28.9.04. On the request of the firm due to illness of their employee, another date of 27.10.04 was given. Again on the said date firm failed to produce the record and another last chance was given to firm to produce its record on 8.11.2004. On 8.11.04 the firm produced its relevant record before the assessing authority. After the verification of all the records, the assessing authority raised a fresh demand of market fee of Rs.38,240/-, RDF Rs.38,240/-, Penalty Rs.38240/- and interest on RDF Rs.1722/- vide demand notice dated 17.11.04 conveyed it to the appellant firm.

Keeping in view the facts, circumstances and provisions of law, I am of the view that the respondent committee has provided all possible opportunities to the firm and the principle of natural justice has been complied with. The case was remanded back twice to the respondent committee. After hearing the argument of the learned counsel of both sides, I am of the view that the respondent committee has now after verifying the record of the appellant firm has rightly demanded the market fee, RDF, Penalty and interest on RDF vide its fresh assessed order dated 8.11.2004 and raised the demand for the same.

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Therefore, in view of the above facts, circumstances, provisions of law this appeal is without any merit and substance and it deserves dismissal. Accordingly, the appeal is dismissed. Orders be sent to the parties."

A perusal of the above shows that no finding had been recorded that the petitioner had purchased or sold any agricultural produce in the market area. The reference may be made to the relevant provisions of the Act provided for levy of market fee and RDF. The same are reproduced below:-

Section 23 of the Act:-

"23. Levy of fees : A committee shall subject to such rules as may be made by the State Government in this behalf, levy on ad-valorem basis -

(i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees;"

Rule 29 of the Rules is as under:-

"29.Levy and collection of fees on the sale and purchase of agricultural produce

(1) Under Section 23 a committee shall levy (i) fees on the agricultural produce bought or sold by licensee; and

(ii)also additional fees on the agricultural produce when sold by a producer to a licensee;

In the notified market area at the rate fixed by the Board from time to time.

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Provided that no fee shall be levied on the agricultural produce brought or sold in respect of which fee has already been paid in the same or other notified market area within the State. The licensee dealer who claims exemption from payment of fee shall make declaration and give certificate to that effect in Form 'KK' within a period of thirty days of the transaction of agricultural product in question to the Committee from where the exemption is claimed.

The certificate in Form 'KK' shall be prepared in quadruplicate from the book-let, duly attested and issued by the Secretary of the concerned committee or its authorised officer, against the payment, fixed by the committee. It shall be the duty of the dealer, claiming exemption from the payment of fee to send the original copy of Form 'KK' to the committee within whose market area the agricultural produce is brought. The second copy shall be sent to the office of the committee within whose market area such agricultural produce is bought and the third copy shall be retained by the dealer, who purchased the agricultural produce and the fourth copy shall be retained by the dealer who sold the agricultural produce and the same shall be kept as a part of their accounts, maintained in respect of payment of the fee. The certificate referred to above presented after the aforesaid period of thirty days, shall not be entertained and no exemption from payment of fee shall be granted to the dealer:

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Provided further that the dealer claiming exemption from the payment of fee under sub-rule (1), shall also produce a copy of the railway receipt, forwarding note, bill, bilty or challan, as the case may be, duly signed by him or his authorised agent in the office of the committee where the agricultural produce is bought before it is loaded the second copy shall be produced by the said dealer in the office of the committee, within whose market area the agricultural produce is brought before it is unloaded and the third copy shall be retained by him. In case no such copy is produced by the dealer in the office of concerned committee, no claim for exemption shall be entertained."

The above provisions clearly show that sale or purchase in the market area is a condition precedent for levy of market fee. In absence of finding to this effect, demand of market fee cannot be upheld. After referring to several decisions on the issue in M/S Punjab Rice Mills Vs. State of Punjab and others,C.W.P. No.15898 of 2006, decided on 20.4.2006 this Court observed as under:-

"Reference to the above provisions clearly shows that sale or purchase in the market area is a condition precedent for levy of market fee. The impugned notice and demand is based on the allegation that form was not submitted within time. The form is required to be submitted if a person claims exemption, from payment of market fees second time in case the same is already paid in one market area and is leviable again at a place where it

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is brought. In the present case, there is no allegation that sale or purchase has taken place in the market area in question. If that is so, no question of claiming exemption arises.

For the above reasons, we are unable to uphold the impugned order of assessment and appellate order (Annexure P-11). Accordingly, this writ petition is allowed. Order Annexure P-11 is set aside. We make it clear that Market Committee would be at liberty to initiate fresh assessment proceedings in the matter in accordance with law, if so advised.

(Adarsh Kumar Goel)
Judge

November 16,2006 **(Rajesh Bindal)**
Pka **Judge**